

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

AMAAL AZIZ,

Plaintiff,

vs.

Case No. 2005-4174-CB

MOHAMMAD MERZAH, et al,

Defendants.

_____/

OPINION AND ORDER

Defendants S Three Properties, LLC (S Three), and S & R Real Properties, LLC (S & R), have filed a motion for summary disposition as to count I of plaintiff's complaint.

I

Plaintiff filed this complaint on October 18, 2005. Plaintiff alleges that defendants Ihsan Mirza (Mirza) and Ifaa Shakarchi (Shakarchi) transferred real property known as 22877 Hillock to her husband, Mohammad Merzah (Merzah) on November 18, 1997. Plaintiff alleges that, on the same day, Mirza, Shakarchi, Merzah and plaintiff executed an "irrevocable license to encroach," allowing Mirza to construct a commercial building on 22932 Groesbeck which "encroached" on 22877 Hillock. Plaintiff claims that on June 12, 2003, Merzah attempted to transfer his interest in 22877 Hillock by quitclaim deed to Mirza. Plaintiff avers that on August 19, 2003, defendant Mirza & Merzah, Inc., transferred property known as 22932 Groesbeck to defendant S Three by warranty deed.¹ Plaintiff alleges that no mention of the irrevocable license to encroach was made in this transfer. Plaintiff alleges that a memorandum of land contract



covering both 22877 Hillock and 22932 Groesbeck between defendants S Three and S & R was recorded on September 24, 2004.² Plaintiff claims that she never released her dower rights in 22877 Hillock, or received any consideration for her dower interest. Further, plaintiff claims that defendant Merzah, despite being married to plaintiff, identified himself as a "single man" in the quitclaim deed purporting to transfer ownership of 22877 Hillock to defendant Mirza. Plaintiff asserts that her dower interest in the property has been threatened by this allegedly fraudulent transfer. Therefore, plaintiff brings count I, for a declaration of rights regarding 22877 Hillock, and count II, for fraud, as to defendants Merzah, Mirza and Shakarchi only.

II

Defendants S Three and S & R now move for summary disposition under MCR 2.116(C)(8). Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim on which relief can be granted. *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Cork v Applebee's Inc.*, 239 Mich 311, 315-316; 608 NW2d 62 (2000).

III

In support of their motion, defendants S Three and S & R argue that plaintiff's alleged dower interest is inchoate and remains contingent until the death of her husband. Specifically, they note that plaintiff cannot be determined to be defendant Merzah's widow until his death.

¹ Plaintiff does not explain the relationship between Mirza, who is referred to as to owner of 22932 Groesbeck in the "irrevocable license to encroach," and Mirza & Merzah, Inc., which allegedly transferred the property to S Three.

² Plaintiff does not indicate how, when or if title to 22877 Hillock passed from Mirza to S Three Properties, LLC.

They also argue that the existence of a dower interest does not prevent a husband from conveying real property owned by him. Lastly, they urge that plaintiff has not alleged any facts establishing the superiority of her alleged dower interest or its inconsistency with their interests in 22877 Hillock.

In response, plaintiff requests that she be allowed to amend her complaint to more clearly reflect the fact that she was married to defendant Merzah "at all times relevant hereto," and to indicate that the relief she is requesting under count I of her complaint is "an order, in recordable form, acknowledging plaintiff's dower interest in said property."³ Plaintiff asserts that an inchoate dower right has a value, and apparently implies that this value may be awarded by the Court. Moreover, plaintiff claims that there is a factual dispute as to whether she has a right of dower. She asserts that any dower right she may have is inconsistent with defendants S Three and S & R's interests in the property.

IV

MCL 558.1 provides that "[t]he widow of every deceased person, shall be entitled to dower, or the use during her natural life, of 1/3 part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof." A husband cannot bargain away or transfer his wife's dower interest. See *M & D Robinson Co v Dunitz*, 12 Mich App 5, 12; 162 NW2d 318 (1968) (citation omitted). However, a wife's inchoate right of dower does not entitle her to possession of, or income from, her husband's property during his lifetime. See *Tuller v Detroit Trust Co*, 259 Mich 670, 680; 244

³ Plaintiff's request to amend her complaint will be granted. However, the Court notes that the amendment has no effect on the disposition of this motion. The original complaint already indicated that plaintiff was married to defendant Merzah at the time of his alleged conveyance to defendant Mirza, albeit under count II of the complaint. Further, the relief requested in the proposed amended complaint—entry of an order, in recordable form, acknowledging plaintiff's dower interest in the property—is properly denied for the reasons *infra*, that summary disposition in favor of defendants S Three and S & R is appropriate.

NW 197 (1932) (citation omitted). Rather, the inchoate right of dower is a contingent estate which vests in the widow at the time of her husband's death. See, e.g., *Oades v Standard Savings & Loan Ass'n*, 257 Mich 469, 473; 241 NW 262 (1932) (citations omitted). While perfect title cannot be transferred without a release of the wife's dower rights, *Gluc v Klein*, 226 Mich 175, 177; 197 NW 691 (1924), the existence of a right of dower does not prevent a husband from conveying real property subject to the possibility that the dower right will subsequently vest. *Tandy v Knox*, 313 Mich 147, 156; 20 NW2d 844 (1945).

In the present case, the Court is satisfied that plaintiff's alleged dower interest does not provide a basis for quieting title to 22877 Hillock. Pursuant to MCL 558.1, plaintiff is not entitled to dower unless she is married to defendant Merzah when he dies, and thus becomes his widow. Until then, plaintiff's "dower interest" is an inchoate, contingent expectancy. While Merzah's alleged fraudulent conveyance of 22877 Hillock as a "single man" presumably would not eliminate plaintiff's dower interest in the property, divorce would abrogate plaintiff's right of dower insofar as she would no longer be Merzah's widow upon his death.

Further, the Court notes that the complaint in any action to determine interests in land must allege both the interest which the plaintiff claims in the premises and the facts establishing the superiority of that interest. MCR 3.411(B)(2). Moreover, actions to determine interests in land are only appropriate when defendants claim, or might claim, an interest which is inconsistent with the interest claimed by plaintiff. MCL 600.2932(1). In the case at bar, plaintiff has not alleged facts supporting her position that her interest in 22877 Hillock is either superior to or inconsistent with the interests of defendants S Three and S & R. Rather, the allegations contained in plaintiff's amended complaint would, if true, merely establish that defendants S Three and S & R have some interest in 22877 Hillock, which in turn may ultimately be subject to

her alleged right of dower. Plaintiff has not indicated how her inchoate right of dower is affected by the interests of S Three and S & R. Therefore, the Court is satisfied that plaintiff cannot sustain her action for a declaration of rights in 22877 Hillock vis-à-vis defendants S Three and S & R.

V

Based on the foregoing, it is hereby

ORDERED defendants S Three and S & R's motion for summary disposition of count I of plaintiff's complaint is GRANTED; Defendants S Three and S & R are DISMISSED from this case. It is further

ORDERED Plaintiff's request to amend her complaint is GRANTED. This Opinion and Order neither resolves the last pending claim nor closes the case. MCR 2.602(A)(3).

SO ORDERED.

DATED:

cc: John Tatone
Jason Killips

Peter J. Maceroni,
Circuit Judge

PETER J. MACERONI

CIRCUIT JUDGE

MAR 21 2006

A TRUE COPY

CARMELLA SABAUGH, COUNTY CLERK

BY: Margaret Sabaugh Court Clerk